



Signed: April 21, 2005

Leslie Tchaikovsky

LESLIE TCHAIKOVSKY
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re

No. 04-43445 TD
Chapter 7

SHAM P. ASNAMI,

Debtor.

SARA L. KISTLER, Acting
United States Trustee,

A.P. No. 04-4293 AT

Plaintiff,

VS.

SHAM P. ASNAMI,

Defendant.

MEMORANDUM RE DENIAL OF REQUEST FOR DEFAULT JUDGMENT

The Office of the United States Trustee (the "UST") filed a complaint seeking to deny the chapter 7 discharge of the above-captioned debtor (the "Debtor"). The complaint alleges, on information and belief, that the Debtor is also known as Sham Asnani, Shan Asnani, Shem Asnani, Parsram Asnani, Parasram Asnani, and Ghanshyam P. Asnani (the "Other Names"). It alleges that the Debtor filed three prior cases using one of the Other names: i.e.,

1 one in 1990, one in 1995, and one in 2003. It alleges that he
2 received a discharge in the case filed in 1995. The 2003 case was
3 filed within the last six years. The complaint alleges that, in
4 the petition filed to commence this case (the "Petition"), the
5 Debtor failed to disclose that he had used any of the Other Names
6 or that he had filed a bankruptcy case within the last six years.
7

8 The complaint alleges that, in the Petition, the Debtor stated
9 that he was single and, in the Statement of Financial Affairs,
10 stated that he had no spouse and was not a party to any lawsuits.
11 It alleges that the Debtor is married to Yashna Asnani, is
12 involved in a lawsuit with Mortgage Press Ltd and has a connection
13 with Royal Crow Bancorp. He also stated that he was not and had
14 not been an officer, director, partner, or managing executive of
15 any corporations, partnerships, sole proprietorships, and was not
16 and had not been a self-employed professional within the last six
17 years. The complaint alleges these statements were false and
18 that he fraudulently failed to disclose required information on
19 the Petition and in the Statement of Financial Affairs.
20

21 The Debtor was duly served with a summons and complaint and
22 failed to file an answer within the time required. His default
23 was taken, and the UST filed an application for a default judgment
24 (the "Application"). The sole evidence provided in support of the
25 Application was the declaration of Minnie Loo (the "Loo
26 Declaration"), the Assistant United States Trustee in charge of
the Oakland office of the UST. The Loo Declaration stated, on

1 information and belief, that, in the Petition, the Debtor had
2 failed to disclose that he had filed bankruptcy cases using the
3 Other Names or that he had filed another bankruptcy case within
4 the preceding six years. Attached to the Loo Declaration is a
5 copy of a bankruptcy petition filed in June 2003. The debtor in
6 that case bore one of the Other Names. There is no explanation of
7 why the UST believes that the Debtor and the individual who filed
8 the previous cases are the same person. Although the names of the
9 Debtor and the prior filer are similar, the Court is not persuaded
10 that this is a sufficient basis for denying the Debtor's
11 discharge. It may be that the UST has more of a factual basis for
12 the Application. However, that additional factual basis must be
13 provided to the Court.

14 The Court also finds troubling the UST's inclusion in the
15 Application of the following quotation: "Upon default, the factual
16 allegations of the complaint will be taken as true. In re
17 Villegas (Valley Oak Credit Union v. Villegas), 132 B.R. 742, 746
18 (Bankr. 9th Cir. 1991)." The Court initially read this statement
19 as requiring entry of default judgment, assuming the allegations
20 of a complaint were sufficient, whenever a defendant failed to
21 answer the complaint. The Court was surprised by this quotation
22 since the Court's understanding of the law was that a default
23 judgment required the submission of evidence sufficient to support
24 a prima facie case.

25 When the Court reviewed the case, it discovered that the
26 statement had been taken out of context and that the holding of

1 the cited case was exactly contrary to what the isolated statement
2 implied. The statement was made as a footnote to the principal
3 holding of the case: i.e., that the trial court has broad
4 discretion to require evidence in support of the request for a
5 default judgment and that entry of a default does not entitle the
6 plaintiff to a default judgment as a matter of right. The Court
7 views the citation of the quoted language out of context as
8 improper practice.

9 If the UST wishes to obtain a default judgment, it should
10 submit a declaration containing a better explanation of the basis
11 for its belief that the Debtor is the same person who filed the
12 previous three cases.

13 END OF DOCUMENT
14
15
16
17
18
19
20
21
22
23
24
25
26

COURT SERVICE LIST

Minnie Loo
Office of United States Trustee
1301 Clay St., Ste. 690N
Oakland, CA 94612-5217

Sham P. Asnami
30743 Knight Ct.
Union City, CA 94587